

**REMARKS/ARGUMENTS**

Claims 104-126, 128, and 130 are currently pending. All claims were rejected. The claims have been amended as noted above. Reexamination and reconsideration of the claims, as amended, are respectfully requested.

Independent claim 104 was rejected for allegedly being unpatentable over Hanright (USPN 5,875,254) in view of Haroldson (USPN 6,094,494) and Ward (USPN 5,201,007). Such rejection is overcome in part and traversed in part as discussed below.

The Examiner alleged that Ward teaches the second concentric acoustic seal of the present application. The second concentric acoustic seal of the present application, however, forms a second confined space between the first concentric acoustic seal and the second concentric acoustic seal. Forming such a second confined space is not seen in Ward or any other prior art. As clearly seen in Figure 7 and described by the specification (Col. 6, Ln. 40-44), the second tube 82 of Ward, which the Examiner had construed as a seal, is hollow and therefore does not and cannot form a confined space between the tube and flanged tip 70, which the Examiner had construed as a first seal.

To further distinguish the present application from the prior art, however, Applicant has amended claim 104 to more particularly describe the second concentric acoustic seal. The term "concentric seal" has been amended to "concentric acoustic seal" in claim 104 and all claims which depend therefrom. Claim 104 has been amended to recite that the second seal of the present application provides an attenuation of sound at frequencies between 125 Hz and 4000 Hz for prevention of oscillatory feedback ([0110], [0111], Table 3, 4). None of the prior art teaches these limitations.

In contrast to the invention, the device of Ward prevents the occlusion effect by venting bone-conducted low frequency sounds out of the ear canal through passageway 85. Ward specifically states that support members 90 of second tube 82 must not block passageway 85 (Col. 6, Ln. 56-61). Because the second tube 82 of Ward is hollow and the support members 90 do not block the passageway 85, the second tube 82 cannot provide an attenuation of sound going into or out of the ear canal. Thus, it is incorrect to construe the second tube 82 of Ward as

a "concentric acoustic seal," and it clearly does not meet all the limitations required by claim 104.

Independent claim 128 was rejected for a similar reason as claim 104 was. Such rejection is traversed in a similar manner as above. The "another appendage" of claim 128 has been amended to point out that, in cooperation with the at least one appendage, it acoustically seals in the ear canal. Again, this limitation is neither disclosed nor suggested by Ward or any other cited prior art. For example, the outer second tube 82 of Ward is hollow and the support members 90 do not block the passageway 85, thus cannot acoustically seal in the ear canal as now required by the limitations of claim 128 (Col. 6, Ln. 56-61; Fig. 7).

Independent claim 130 was also rejected for allegedly being unpatentable over Hanright (USPN 5,875,254) in view of Haroldson (USPN 6,094,494) and Ward (USPN 5,201,007). Such rejection is overcome in part and traversed in part as follows.

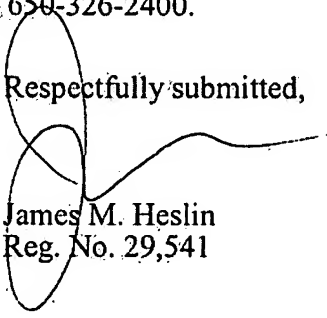
Claim 130 has now been amended to recite a means operatively associated with the tube portion and the hearing device for acoustically sealing in the ear canal and concurrently directing occlusion sounds away from the eardrum. This limitation is neither disclosed nor suggested by Ward or any other cited prior art. For example, in Ward, the occlusion effect is prevented by venting bone-conducted low frequency sounds out of the ear canal through passageway 85 and second tube 82 (Col. 6, Ln. 56-61). However, as pointed out above, second tube 82 cannot acoustically seal in the ear canal, a limitation required by of claim 130 in the present application. Furthermore, as occlusion sounds are directed away from the eardrum and through passageway 85, Ward teaches that tube 82, located about passageway 85, must not block passageway 85, for example, by being hollow and having support members 90 not blocking the passageway 85 (Col. 6, Ln. 56-61). Thus, the invention of Ward does not provide a means for concurrently acoustically sealing in the ear canal and directing occlusion sounds away from the eardrum.

**CONCLUSION**

Neither Ward nor any of the other cited prior art neither disclose nor provide rationale for the claim limitations pointed out and the added limitations to the claims, which have primarily been added for clarity. Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

  
James M. Heslin  
Reg. No. 29,541

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 650-326-2400  
Fax: 415-576-0300  
Attachments  
JMH:djc  
61180709 v1